

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

February 24, 2003

3:30 p.m.

MEMBERS PRESENT

Senator Scott Ogan, Chair
Senator Thomas Wagoner, Vice Chair
Senator Fred Dyson
Senator Ralph Seekins
Senator Ben Stevens B
Senator Kim Elton
Senator Georgianna Lincoln

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 69

"An Act relating to regulation of shallow natural gas leasing and closely related energy projects; and providing for an effective date."

HEARD AND HELD

SENATE CONCURRENT RESOLUTION NO. 3

Extending the termination date of the Joint Legislative Salmon Industry Task Force until 2005.

HEARD AND HELD - ASSIGNED TO SUBCOMMITTEE

CS FOR HOUSE CONCURRENT RESOLUTION NO. 6(FSH)

Relating to the continuation of the Joint Legislative Salmon Industry Task Force until 2004.

MOVED CSHCR 6(FSH) OUT OF COMMITTEE

SENATE BILL NO. 74

"An Act extending the renewal period for oil discharge prevention and contingency plans; and providing for an effective date."

HEARD AND HELD

PREVIOUS ACTION

HB 69 - No previous action to record.

SCR 3 - No previous action to record.

HCR 6 - No previous action to record.
SB 74 - No previous action to record.

WITNESS REGISTER

Senator Gary Stevens
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HCR 6

Mr. Larry Dietrick
Department of Environmental Conservation
410 Willoughby
Juneau, AK 99801-1795
POSITION STATEMENT: Supports SB 74

Mr. Breck Tostevin
Assistant Attorney General
Department of Law
1031 W 4th Ave.
Anchorage, AK 99501-1994
POSITION STATEMENT: Explained the intent of Amendment 1 to SB 74

Ms. Marilyn Crockett
Alaska Oil and Gas Association (AOGA)
121 West Fireweed Lane
Anchorage, Alaska 99503
POSITION STATEMENT: Supports SB 74

Mr. Tadd Owens
Resource Development Council
121 W. Fireweed, No. 207
Anchorage, AK 99503
POSITION STATEMENT: Supports SB 74

ACTION NARRATIVE

TAPE 03-7, SIDE A
Number 0001

CHAIR SCOTT OGAN called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Senators Dyson, Wagoner, Seekins and Ogan were present.

HB 69-REGULATION OF SHALLOW NATURAL GAS

CHAIR OGAN declared a conflict of interest with HB 69 because he is employed as a consultant for a company with an interest in that legislation. He assigned a subcommittee to consider HB 69 made up of Senators Dyson, Seekins and Lincoln.

SENATOR SEEKINS informed members of the Seekins' conflict of interest rule: no interest, no conflict.

SCR 3-EXTEND JT LEG SALMON INDUSTRY TASK FORCE
CSHCR 6(FSH)-EXTEND JT LEG SALMON INDUSTRY TASK FORCE

CHAIR OGAN explained to members that although SCR 3 was scheduled, HCR 6 passed out of the House on Friday and was referred to the Senate Resources Committee earlier in the day. According to Tam Cook, Director of the Legal and Research Services Division, HCR 6 can be heard in place of SCR 3 since the two resolutions contain the same subject matter and the committee has satisfied the notice requirements. He then asked the sponsor to address the legislation.

SENATOR GARY STEVENS, sponsor of HCR 6, told members he is looking forward to co-sponsoring SCR 3. He then described the measure as follows.

HCR 6 extends the life of the joint legislative salmon task force until the end of the second session of the 23rd Legislature. This task force was created by the 22nd Legislature out of concern for Alaska's lost market share of the salmon industry and expansion into new markets. The salmon industry is an enormous economic engine that drives Alaska's coastal economies.

The Joint Salmon Industry Task Force made enormous progress during the course of its meetings. Its first meeting was held on July 22, 2002, at which time five subcommittees were appointed. Those subcommittees met over 43 times in many communities of the state and Seattle. The task force received 279 proposals, produced 13 pieces of draft legislation, and generated a huge amount of discussion and material that will have to be considered in the future. He hopes, for those reasons, the committee will favorably consider extending the life of the task force. He added that the bill has a zero fiscal note. He pointed out that because Chair Ben Stevens spent the funds appropriated to the task force last year wisely, it will be able to function for at least one more year on the remainder of those funds.

CHAIR OGAN asked if those funds will have to be reappropriated and carried forward to the next fiscal year.

SENATOR GARY STEVENS said he does not believe so.

CHAIR OGAN said he has watched a lot of task forces come and go over the last nine years and expressed concern that extending this task force will deluge the Legislature with more legislation and requests for more funding. He asked Senator Gary Stevens what will come out of this extension.

SENATOR GARY STEVENS said he cannot address whether the task force will ask for more funding, but he can say that an enormous amount of effort and time went into the process, made up of fishermen, processors, community leaders and legislators. He felt very good about the process. The resultant legislation provides simple and effective measures to help the industry and give it more choice. However, the task force was unable to deal with more far reaching issues in that time frame.

CHAIR OGAN said he would play the role of devil's advocate and asked:

The bottom line is farmed fish is kicking our rears up here. We can have all of the task forces in the world that we can feel good about but, at the end of the day, we're not going to change that. Is that something that you think is going to - if we invest more money and more time and energy of Alaskans that's going to come out of this that could put the salmon industry back on its feet, short of some kind of a retaliatory strike against the fish farmers...?

SENATOR GARY STEVENS said that is a fair question. He believes Alaska lost market share because the state wasn't paying close attention to what the farmed fish industry was doing to the market. However, one positive outcome is that the consumption of salmon has increased. He doesn't believe Alaska salmon can compete on the same price level as farmed fish, but the handling practices of Alaska salmon can be improved to increase quality.

In response to Chair Ogan's question about whether Alaska is likely to lose its fishing industry after spending a lot of time and money, he does not believe so. He said that regional marketing plans are developing to publicize area-specific fish, which he believes is all for the good. He told members that he was able to see some fish processing operations in Europe and

felt the strongest advice he received was that Alaska has to stress the fact that its salmon is a wild, natural product and its harvest does no damage to the species.

CHAIR OGAN concurred that Alaska needs to carve out a niche market.

3:45 p.m.

SENATOR WAGONER pointed out that he is a member of the salmon co-op in Cook Inlet that increased the value of the co-op fish three times this year and that was on a small market of 10,000 pounds. The co-op has committed to 30,000 pounds next year. He agreed that niche markets do exist but they have to be developed, and that his co-op is focusing on the Lower 48 rather than foreign marketing.

SENATOR SEEKINS noted that HCR 6 provides that the Legislative Council may, upon request, fund contracts for research. He asked if that would provide the task force with a mechanism to use if it needs to contract for additional research.

SENATOR GARY STEVENS said that is correct but the task force did not take advantage of that provision this past year.

SENATOR BEN STEVENS, the Chair of the Joint Salmon Industry Task Force, explained that under the Legislative Council procurement rules, the task force itself cannot expend over \$25,000 without full council approval. When the task force was assembled last July, Senate President Halford and Speaker Porter asked him if that amount would be adequate. He did not know but thought the task force may want to enter into some contracts for in-depth economic analyses of the proposals on the table. The task force never did but this provision will allow the task force to do what the presiding officers proposed. During the interim, the task force will make requests for funding to the Legislative Council. The Senate President, Speaker and Chair of the Legislative Council can approve the request.

SENATOR SEEKINS said he wanted to point out that a funding mechanism exists that contains a check and balance system. He then said the commercial fishing industry is in deep crisis. It's the sole support of many Alaskan families. He said he has talked to many of those families in Interior Alaska who are concerned that the industry will try to make up in volume what it is losing in price and that is a short-term solution that will have a devastating effect on the wild fish stocks. He said

Senator Ben Stevens understands the complexity of this issue. The challenges will remain unsolved without a concerted effort by the state and he believes the task force is a good mechanism to use.

SENATOR GARY STEVENS said if the Legislature does nothing to help out, the state will be facing enormous bankruptcies by small businesses. The state has already faced the closure of processing plants. Many coastal communities will also suffer as the fishing industry is an important tax base in those communities. He said volume is not the solution; quality and price are.

CHAIR OGAN agreed that volume is not the answer because the argument in the past is if fishermen cannot make enough money fishing, more fish need to be allocated to that fishery, which pits the commercial and sport fisheries against each other. He said allocation is part of the problem but not the entire problem.

SENATOR ELTON commented that he believes everyone on the task force understands that the job of task force members is not to allocate; that is the job of the Board of Fish. None of the task force members are interested in political solutions to allocation issues. He agreed that part of the problem is price related so the task force focused on issues that take some of the costs out of the industry - on the harvesting and processing side. He agreed that the marketplace has changed and Alaska now has advocates for wild fish. He said he appreciates that Senator Seekins pointed out there is a counterbalance on spending and said, "I'll be stunned if we ever need it as I think we have one of the most tight-fisted Chairman that we've ever seen." He maintained that he does not mean that in a pejorative manner and that Chairman Stevens has given members a high level of comfort in the way he has dealt with issues. He then pointed out the genesis of this occurred last year at the salmon summit, which was co-hosted by former Governor Knowles and U.S. Senator Ted Stevens. He thinks the Legislature has done a good job kick starting the process, however the task force has only been able to pick off the low-hanging fruit right now. Alaska has lost over \$600 million in the salmon segment of the industry alone. The challenges are great. He said he is comfortable with continuation of the task force.

SENATOR LINCOLN said she supports the continuation of the task force but pointed out that Senator Gary Stevens mentioned the financial impact to the coastal communities and she is concerned

that the task force is looking at the impact on all of Alaska, not just the coastal areas.

SENATOR GARY STEVENS said it is and that it is not the intention of the task force to concentrate on coastal communities.

CHAIR OGAN said he believes commercial fishermen are some of the best free market capitalists around and the Legislature needs to do what it can to help them.

SENATOR DYSON moved CSHCR 6(FSH) from committee with individual recommendations and its zero fiscal note.

CHAIR OGAN announced that without objection, the motion carried. He then announced the committee would take up SB 74.

SB 74-DISCHARGE PREVENTION & CONTINGENCY PLANS

MR. LARRY DIETRICK, Acting Director of Spill Prevention and Response in the Department of Environmental Conservation (DEC), read the following testimony into the record.

SB 74 supports the Governor's goal of improving regulatory efficiency by reducing the administrative burden while improving spill prevention.

SB 74 will streamline the state's permitting process by lengthening the time for renewal of Oil Discharge Prevention and Contingency Plans from the current three years to five years.

A five-year renewal period will streamline the contingency review process for industry while maintaining Alaska's strong spill prevention and response standards.

Focusing on the actual testing of oil spill prevention and response preparedness through in-the-field inspections, drills, and exercises is one of our most effective means of ensuring spill prevention and response readiness.

Oil Discharge and Contingency Plans are public noticed, reviewed and approved by the Department of Environmental Conservation.

They are required for operators of oil terminals, refineries, crude oil transmission pipelines, oil exploration and production facilities, oil tank vessels, oil barges, nontank vessels of over 400 gross tons and railroad tank cars.

There are multiple benefits from the change proposed by the bill.

The bill furthers the goal of permit streamlining with no loss of environmental protection, and complements initiatives currently being undertaken by the Department to shift the emphasis away from the administrative review and approval process to field verification of response capability.

The bill will significantly reduce the administrative burden on the regulated community and will shift the emphasis from paperwork to performance.

The reduction in paperwork will increase the ability of operators and the Department to focus on spill prevention and facility operation.

The change will allow operators more time to make practical enhancements to their spill prevention and response capabilities.

The change will improve environmental protection and preparedness through increased field presence and the ability to work directly with operators to ensure response readiness through on-site facility and vessel inspections, spill drills and exercises.

The change will also make the state renewal cycle consistent with the five year renewal cycle for federal oil spill contingency plans required under the Oil Pollution Act of 1990, as well as those of other West Coast states.

MR. DIETRICK told members that Mr. Tostevin, assistant attorney general, was available to speak to members via teleconference about a proposed amendment that addresses the transition provisions.

4:00 p.m.

SENATOR ELTON asked Mr. Dietrick if SB 74 will prevent DEC from issuing a permit or from approving a plan based upon a future act of the permit holder. He expressed concern that a situation may arise when an advance in technology would improve a plan, but DEC would be prevented from asking the permittees to improve their plan capabilities.

MR. DIETRICK said it would not. The provision for plan amendments, which is the tool DEC would use to do that, remains unchanged. By allowing DEC to field test technologies, capabilities and representations made in the plan, DEC will better be able to determine what is working.

CHAIR OGAN asked if, typically, changes are made to the plan at the end of the three-year cycle, or whether changes are made to the plan along the way.

MR. DIETRICK said the bulk of the facilities in Alaska haven't changed over the years. These particular laws were enacted in 1990 so most of the existing facilities are on their fourth three-year renewal cycle. Those that have had a change in operations are required to amend their plans to reflect that change. DEC then reviews and approves the amendment in conjunction with the three-year renewal. This change will extend out to five years. Any change that happens at a facility during the five-year time frame that would result in, as stated in the bill, "a diminishment in the response capability," is cause for the plan to be amended. Therefore, operators cannot diminish their spill response capabilities in any form without filing an amendment to their plans.

CHAIR OGAN asked if the companies must submit any changes in their contingency plans to DEC and that is when the plan is amended, rather than during the three-year review.

MR. DIETRICK said at the end of the three-year renewal cycle, the companies go through a formal public review process, regardless of whether the companies have made any changes. Many companies have made no changes so lengthening the renewal cycle to every five years will provide a huge gain while preserving the ability to amend a plan if any change occurs within the five years.

CHAIR OGAN asked if many people testify at the public hearings.

MR. DIETRICK said that hearings are held at the discretion of DEC. DEC is mandated to provide a 30-day public comment period.

If controversial issues arise during that public comment period and a hearing is requested, DEC holds one.

CHAIR OGAN asked if DEC gets many requests for hearings.

MR. DIETRICK said the number of requests has not been high - maybe 20 percent or less.

CHAIR OGAN asked if any changes have been made to operation plans based on public input and public hearings.

MR. DIETRICK said yes, DEC does react to public input.

CHAIR OGAN asked if public comments are received at every public hearing and whether DEC changes something in the plan as a result of each hearing.

MR. DIETRICK said the bulk of the changes made resulted from written comments. However, regardless of whether the comments are made orally or in writing, DEC considers them. He said the preponderance of the input is in response to the 30-day public notice and that is the largest category of comments that DEC reacts to.

SENATOR LINCOLN noted that SB 74 was introduced on February 19 at the request of the Governor and that the Senate Resources Committee is the only committee of referral. She asked the Chair what process the Legislature has used to provide adequate public notice of this legislation. She indicated this legislation will make a major change and was only submitted last week.

CHAIR OGAN told Senator Lincoln that the committee appropriately noticed the legislation by giving a 5-day notice. He noted that some amendments have been suggested so he does not plan to move the bill out of committee today.

SENATOR LINCOLN said in her efforts to seek public input on SB 74, she heard a concern expressed that DEC's five-year renewal process will align with the federal government's five-year time frame but the federal government requires a major oil spill drill once every three years. Most Alaska C-plan [contingency plan] holders schedule their drills to coincide with the state mandated contingency plan review. She questioned how companies will align the oil spill drill to coincide with the federal schedule.

MR. DIETRICK told members that DEC envisions negotiating the alignment between the review cycles. DEC hopes, two years after SB 74 is enacted, to negotiate with an operator so that the operator can choose an alternative date within the state five-year window to allow it to line up with the federal requirements. Regarding the drill, Mr. Dietrick said they are already coordinated in Alaska. Virtually all of DEC's significant drills are fully coordinated with the U.S. Coast Guard (CG) and the U.S. Environmental Protection Agency (EPA). Drills consist of a series of activities, from equipment verification checks to telephone exercises to full deployment exercises but the higher cost drills are fully coordinated with the federal agencies as well as at the local level.

SENATOR LINCOLN said the other concern she heard was that Alaska has the reputation as a leader of the best available technology for oil spill prevention and response. She asked if the change to a five-year renewal cycle will have any effect on that reputation.

MR. DIETRICK said that DEC believes its ability to test the technology represented in the plans will be a more productive way to find out if those best available technologies work. To date, DEC has not had the ability to do tests on the ground. By freeing up some of the administrative burden and focusing on performance and response, DEC believes it will better be able to field check those technologies.

SENATOR LINCOLN expressed concern that she can't envision how streamlining the permitting system in this way will provide more staff time.

MR. DIETRICK said DEC considered how to implement this change without backsliding on the requirements or the standards. He explained that the statute for spill response has two parts. The first applies to contingency planning, which is where a plan is compared to a theoretical spill with theoretical assumptions and a response is designed to deal with it. That is essentially what the review process is about. In the second part of the statute, the legislature clearly recognized the need to have an incident command system (ICS) and well-qualified and trained people able to respond to a spill. He feels that is the more important aspect of the total framework needed to assure that the state has a good response capability. It shifts the balance from the plan review of the theoretical spill and focuses the emphasis on the ICS and field practice of response. The additional time DEC

will get is the time realized from the [increase] in the review period from three to five years.

SENATOR LINCOLN asked if a fiscal note will be forthcoming from the Department of Law.

CHAIR OGAN asked Senator Lincoln to defer to Mr. Tostevin for an answer.

SENATOR ELTON asked whether a reduction in staff at a facility would trigger a plan review.

MR. DIETRICK said it would have to fit into the phrase "diminishment of response capability" so that a reduction in the number of personnel earmarked as part of a planned response to a theoretical spill would trigger the amendment process.

CHAIR OGAN added that committee staff requested fiscal notes but the DEC fiscal note is the only one that was submitted. There being no further questions of Mr. Dietrick, he took testimony from Mr. Tostevin.

MR. BRECK TOSTEVIN, assistant attorney general, Department of Law (DOL), said he would like to first speak to a proposed amendment to SB 74 offered by DOL that addresses transition scenarios that may arise after the legislation is enacted. He explained that the amendment would add a new section to an uncodified law provision, which would be in title transition. Subsection (a) would allow DEC to administratively extend the expiration date of oil discharge prevention and contingency plans approved before the effective date of the act. There would be two limitations on DEC's authority to extend the C-plan renewal date: one would be that the plan would have to be in effect on the day before the effective date of the act; the second would occur if DEC had issued a notice of violation to the C-plan holder concerning the C-plan. That violation would have to be corrected to the satisfaction of DEC before the C-plan expiration date can be extended. The intent of subsection (a) would be to allow DEC to extend the expiration dates of existing C-plans without going through new administrative review or renewal procedures and without having to adopt new regulations. Under subsection (a), DEC would upon the effective date of the act administratively extend the expiration date of the C-plan then in effect for up to two years. This would allow the immediate benefits to DEC and the industry discussed earlier by Mr. Dietrick. Subsection (b) gives DEC the ability to adopt regulations implementing the transition provision if it so

chooses. However, adopting regulations would be optional. Subsection (a) clearly provides that regulations are not necessary in order for DEC to administratively extend the expiration date.

MR. TOSTEVIN said in conclusion, the adoption of the amendment creating the transition provision would clarify that, upon enactment of this legislation, DEC could extend the expiration date up to two years.

TAPE 03-7, SIDE B

CHAIR OGAN said the proposed amendment had not been offered yet so he would take further testimony on the bill at this time and address the amendment later.

SENATOR ELTON asked if DEC anticipates that the review process for a five-year permit will be substantially similar to the review process for a three-year permit.

MR. DIETRICK said the review process will remain the same.

SENATOR SEEKINS asked if DEC believes the process used over the last three years is substantial enough to allow for the automatic extension of permits for two more years.

MR. DIETRICK said DEC is comfortable with that process for several reasons:

- The required amendment remains in place so if an operator diminishes the operation at any time within the extension, DEC must be notified.
- DEC also has a requirement of non-notification readiness so an operator must immediately notify DEC if any equipment has been taken off line.
- Subsection (b) of the proposed amendment will ensure that an extension will not be granted to any existing plans that are out of compliance.

SENATOR LINCOLN said Mr. Dietrick is assuming that with this proposed change, DEC will have the same number of staff. She asked if a budget cut to DEC staff could create a problem.

MR. DIETRICK said DEC has considered this change and prepared a zero fiscal note with no change in the current level of staffing.

SENATOR LINCOLN asked what a decrease in the number of DEC staff would do to this whole process.

MR. DIETRICK said any reduction in staff would have to be evaluated.

SENATOR ELTON asked what would happen in a situation if the best available technology (BAT) has changed on a currently permitted three-year plan. He noted the language in the proposed amendment is permissive in that DEC may extend the expiration date. He asked whether DEC will provide automatic extensions or whether it will go through some kind of a review process. He pointed out if DEC does a review process, it might be more expedient to approve a new five-year plan rather than extend an existing plan for two more years.

MR. DIETRICK said the operator does the BAT analysis at the time of plan submission. Again, if there is no change to the operation, DEC would likely conclude that the analysis continues to be valid for another two years. DEC is also doing a BAT review with funds awarded by the Legislature last year. A DEC workgroup is comprehensively looking at spill prevention and response technologies.

SENATOR ELTON said if there is a review process on an extension, he would think the private entity would prefer to apply for a new five-year permit rather than a two-year extension.

MR. DIETRICK deferred to Mr. Tostevin for an answer to that question, but said his understanding of the transition language is that any three-year plan approved prior to the effective date of the bill can be extended for up to two additional years. If a plan was reviewed after the effective date, it would be eligible for a five-year approval.

SENATOR ELTON said his concern is that if DEC has the discretion to extend, it may be beneficial to the entity to request approval of a five-year permit rather than a two-year extension.

MR. DIETRICK deferred to Mr. Tostevin for an answer.

MR. TOSTEVIN clarified that the way the transition is drafted, a currently approved plan would get a two-year extension upon its expiration date. When the two years expires, the operator would have to apply for a renewal, which would last for five years. If an operator wanted to voluntarily seek a renewal after the

effective date of the act, that would be legally permissible, as it is right now.

SENATOR ELTON said it seems that DEC is taking an option away from a facility manager by not offering the option of a five-year renewal.

SENATOR SEEKINS said he understood it the other way around - that an operator could voluntarily reapply for a new five-year permit at any time.

4:30 p.m.

MR. TOSTEVIN said there is nothing to prevent an operator from applying for a new five-year C-plan approval after the effective date of the legislation.

CHAIR OGAN said common sense dictates that no one will apply before the expiration date because it will cost that much more.

MR. DIETRICK said one reason a company might want to apply for a five-year renewal rather than an extension is to align its renewal date with the federal renewal cycle. He believes Mr. Tostevin said that would be allowable.

CHAIR OGAN took testimony from members of the industry.

MS. MARILYN CROCKETT, Deputy Director of the Alaska Oil and Gas Association (AOGA), told members that all of AOGA's 17 member companies are required to carry C-plans as part of their operations. AOGA has spent quite a bit of time during the last year looking at possible opportunities to update and streamline statutes and regulations to enhance resource development in Alaska. AOGA used a guiding principle throughout that process, based on the premise that it wanted to see streamlining of the requirements occur without compromising environmental protection. AOGA believes SB 74 is a perfect example of that principle.

MS. CROCKETT said the current federal renewal cycle and West Coast states' renewal cycles are based on five-years. AOGA found the other oil producing states in the United States also have a five-year renewal cycle. Therefore, it is a tried and true plan. She noted the development of a C-plan and the renewal process is very costly. The renewal process can run anywhere from \$60,000 to \$100,000. She said she could not provide the costs to DEC and to the public of responding to those applications when they are

renewed every three years, but she assumes those costs are substantial as well. SB 74 will save the private sector and state money.

MS. CROCKETT pointed out that SB 74 will also free up DEC from the paperwork exercise of reviewing plans every three years and will allow them to get out and see the operations first hand and conduct drills. AOGA's experience on C-plan reviews has been that industry members must submit their renewal package 180 days in advance of the three-year expiration date. AOGA found that about the time the C-plan is finally approved, companies are starting to prepare materials for the next three-year renewal cycle. She said that SB 74 will at least let the ink dry on the 125 existing plans. She encouraged members to favorably consider SB 74 and offered to answer questions.

CHAIR OGAN asked how many man-hours goes into preparing a renewal.

MS. CROCKETT said that she would have to get that information, but added that hundreds to thousands of man-hours are involved in the development of plans. She noted the plans are several volumes thick and consist of substantial and comprehensive documents. She added that it probably costs hundreds of thousands of dollars.

CHAIR OGAN took testimony from Tadd Owens.

MR. TADD OWENS, Executive Director of the Resource Development Council (RDC), stated support for SB 74 for the following reasons:

- The current three-year renewal cycle often does not result in meaningful improvements in environmental protection or regulatory compliance. Increasing the time between renewals from three to five years will bring the program's benefits in line with its costs.
- A five-year renewal cycle will allow the state to focus its resources on site inspections rather than the office work associated with plan reviews and provide staff with a more thorough understanding of industry operations. Staff can better evaluate the effectiveness of existing plans, which will allow for better oversight, incorporate more high-value improvements, and be less vulnerable to legal challenges.

SENATOR SEEKINS asked who drafted Amendment 1.

MR. DIETRICK told members that Mr. Tostevin drafted Amendment 1.

SENATOR SEEKINS pointed to the words "may" on line 7 and "up to" and said that as a used car salesman, "...I think this Philadelphia lawyer wrote those to give his client a lot of wiggle room here because 'may' could be 'may not.' It implies they may not, and 'up to' could be 'less than.'" He noted that Mr. Dietrick has said the process is good enough and that the plans can be extended for another two years, therefore he believes this language should be specific rather than uncertain. That way, if a company is running up against the time when this bill is enacted, the company should have the certainty of knowing its plan will be extended, barring any contingencies, for two years.

In addition, SENATOR SEEKINS expressed concern that the word "may" is used again on line 15, allowing DEC to adopt regulations. He asked whether that language is necessary because it is already implied that DEC has the right to adopt those regulations once this bill passes.

MR. TOSTEVIN responded that he used the words, "may extend" to provide flexibility when addressing a situation in which a plan holder might want a shorter period than two years to address coordinating the plan with the federal five-year renewal period. He said the committee could certainly make the extension period mandatory.

SENATOR SEEKINS said he was more interested in pinning DEC down, rather than the applicant. He said he thought the applicant already had that flexibility.

CHAIR OGAN said if the issue is alignment with federal permits, the language could read, "shall extend up to two years."

SENATOR SEEKINS said he still doesn't like the words "up to" because he believes DEC ought to extend it automatically and the plan holder should be given the option of coordinating the timing with the federal permit. He does not want DEC to be able to extend a permit for one year.

CHAIR OGAN suggested asking industry people to comment on this question.

SENATOR ELTON commented that "shall extend for two years" tells DEC it can't work with a company if it wants something different. He noted DEC already has the authority to mandate a plan amendment so he'd be stunned to find this was designed to do anything but give more flexibility to the applicant rather than the department.

MR. DIETRICK said DEC thought, when it reviewed Amendment 1, the intent of that language was to allow DEC the flexibility to accommodate companies that want to synchronize their plans. He pointed out that subsection (2)(a) is the other key provision. The "may" is contingent upon whether it is prior to the effective date of the act and that a company has no prior violations.

SENATOR SEEKINS said that he has been on the receiving end of that kind of language and that is not how the court perceives it. He said he has no problem providing more flexibility to the applicant, but he does not feel comfortable giving the bureaucracy flexibility.

CHAIR OGAN asked Ms. Crockett and Mr. Owens to comment.

MS. CROCKETT expressed concern about a misinterpretation of the words, "may extend" because they will open up opportunities for legal challenges. She wondered whether there is a way to make this a simple, self-implementing provision that says notwithstanding the contingency provisions, the expiration date of a C-plan previously approved by DEC before the effective date will be extended by two years. That way, if no violations have occurred and the plan was approved prior to the effective date, DEC will not be required to jump through hoops to demonstrate that a plan should be extended.

MS. CROCKETT said with regard to a situation where an applicant may want to have a C-plan review for coordination purposes prior to the two years, she is hard pressed to imagine that DEC would turn down a request of that nature. She said she would support language that makes it abundantly clear that the legislature's intent is to extend the plans in place today and operating under the requirements of the laws and regulations.

CHAIR OGAN asked Ms. Crockett to comment on DEC's "we're here to help you" argument about why it needs the flexibility to assist the industry.

MS. CROCKETT said the real issue is the attention this could get in the courts because the language is unclear.

CHAIR OGAN said ambiguous statutory language is ripe for litigation.

SENATOR SEEKINS noted if the words "shall" and "for" are substituted for "may" and "up to," it will have no effect on the "if" provisions of line 9.

CHAIR OGAN told members he drafted proposed language for a new amendment.

SENATOR ELTON asked if anyone is sponsoring the amendment.

SENATOR SEEKINS agreed to be the sponsor of Amendment 1.

SENATOR ELTON said he wants to make sure that what the committee is doing will accomplish something without putting handcuffs on somebody. He said it is his understanding that an operator with an existing plan can request a plan renewal at any time. He questioned what would happen if an operator wanted an extension for a year. He asked if the language says shall extend for two years, will DEC be able to work with them or whether the operator can apply for a new permit.

MR. DIETRICK said it would be DEC's desire to allow companies the opportunity to synchronize the federal plan review cycle with the state plan review cycle. DEC normally does not like to renew plans in a cycle shorter than three years because it is more work. However, with this change, he can see the need to grant a request for a shorter duration in order to allow a company to make that alignment.

SENATOR ELTON said his concern is that this language will create a problem for a company that needs to be aligned three months after their permit expiration.

MR. DIETRICK said this language could create a time crunch problem of some operators. The bigger operators and more complicated reviews are for the larger facilities: TAPS, the Valdez Marine Terminal, and the Prince William Sound crude oil tanker traffic. DEC can approve the plans of the smaller operators in a shorter time period.

CHAIR OGAN said he had language prepared to amend Amendment 1 and would like to move the amendment but hold it in committee to provide time for consideration.

SENATOR SEEKINS moved to adopt the amendment to Amendment 1, which reads as follows:

AMENDMENT TO AMENDMENT 1

Lines 5-9

TRANSITION: (a) Notwithstanding any contrary provision of AS 46.04, including the review procedures in AS 46.04.030, and the regulations adopted under AS 46.04, the expiration date of an oil discharge prevention and contingency plan approved by the Department of Environmental Conservation before the effective date of this Act shall be extended for two years if

Lines 15-16: Delete paragraph (b).

SENATOR ELTON asked if this bill will be rescheduled for next Monday's meeting.

CHAIR OGAN announced a brief at-ease. When he reconvened the meeting, he announced SB 74 and its amendments would be heard on Monday, March 3, 2003. He then adjourned the meeting at 5:05 p.m.